

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

ROBERT J. DESSELLE,)
Plaintiff,)
v.) No. 02-1057-CV-W-FJG-SSA
JO ANNE B. BARNHART,)
Commissioner, Social Security)
Administration)
Defendant.)

ORDER

Currently pending before the Court is plaintiff's Motion for Judgment on the Pleadings (Doc. # 13).

Plaintiff asks for judgment on the pleadings pursuant to an April 17, 2005 Order entered by the Eighth Circuit Court of Appeals. Plaintiff states that the sole issue for the lower court was whether he had earned income in the calendar years 1993 and 1994. Plaintiff states that the IRS records clearly show four quarters of employment in each year and he should be awarded appropriately.

Defendant states that on April 27, 2005 the Eighth Circuit issued a decision vacating this Court's judgment and remanding the case with directions to remand to the Social Security Administration for further administrative proceedings. Defendant states that on June 13, 2005, a Petition for Panel Rehearing and Rehearing En Banc was filed, arguing that without the benefit of briefing, the circuit court improperly invalidated the Commissioner's regulation at 20 C.F.R. § 404.822(b) based on a misinterpretation of the applicable statutory authority. Defendant states that this court should not take any

action until after the Eighth Circuit has ruled on the petition for rehearing. Even if the petition for rehearing was not pending, defendant states that it would be improper for the Court to enter judgment on the pleadings because the Eighth Circuit directed remand to the Social Security Administration for further proceedings.

On July 20, 2005, the Eighth Circuit issued an Order granting the petition for a panel rehearing and vacating the previous April 27, 2005 Opinion. On July 20, 2005, the Eighth Circuit on rehearing affirmed the decision of the district court which denied disability insurance benefits to the plaintiff. Plaintiff filed a petition for rehearing, but that petition was denied on September 1, 2005. Thus, as there is no longer a judgment in favor of the plaintiff, there is no basis for entering judgment on the pleadings in plaintiff's favor. Accordingly, the Court hereby **DENIES** plaintiff's Motion for Judgment on the Pleadings (Doc. # 13).

Date: October 24, 2005
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge